

A RESOLUTION

BY CITY UTILITIES COMMITTEE

AUTHORIZING THE MAYOR OR HER DESIGNEE TO ENTER INTO A RAILROAD CROSSING AGREEMENT WITH CSX TRANSPORTATION, INC. ASSOCIATED WITH THE CONSTRUCTION OF A CERTAIN SANITARY SEWER RELOCATION PROJECT, KNOWN AS THE ROCKLEDGE SANITARY SEWER RELIEF PROJECT ("PROJECT"), LOCATED ALONG MANCHESTER, BISMARK AND ROCKLEDGE ROADS, PROVIDING CAPACITY RELIEF TO THE ROCKLEDGE SANITARY SEWER OUTFALL AT NO COST TO THE CITY; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") is responsible for maintaining and servicing the City's sewer system; and

WHEREAS, Beazer Homes Corporation ("Beazer Homes") is planning to construct a 162 unit residential community of condominiums and recreational amenities within approximately 5.07 acres of real property located along Manchester, Bismark and Rockledge Roads (the "Development") that will be serviced by the Rockledge Road Sanitary Sewer Outfall; and

WHEREAS, the Department of Watershed Management has determined that the existing Rockledge Road Sanitary Sewer Outfall line of the City of Atlanta Sewer System does not have the adequate size to provide the capacity required by government standards to service additional residential and commercial development planned for the Beazer Development and any future development in the area; and

WHEREAS, the City has identified a sewer relief project , known as the Rockledge Sanitary Sewer Relief Project ("Project") to provide capacity relief needed for the Development and any future development, which will require realigning an existing sewer line to include crossing the CSX railway in a different location as now exists; and

WHEREAS, CSX requires entering into a railroad crossing agreement to provide the City the requisite permission to relocate its sanitary sewer line within the railroad right of way, in substantial form as that agreement attached hereto as Exhibit "A"; and

WHEREAS, entering into an appropriate Railroad Crossing Agreement is in the best interest of the City to facilitate the implementation of the Project and to provide sewer capacity for future development in the area, including the subject Development constructed by Beazer Homes; and

WHEREAS, pursuant to a certain agreement between the City of Atlanta and Beazer Homes Corp., all costs associated with the crossing agreement shall be borne by Beazer Homes; and

WHEREAS, the Commissioner of the Department of Watershed Management recommends entering into an appropriate Agreement with the CSX in substantial form as the agreement attached hereto as Exhibit “A”, which allows a portion of the sanitary sewer to be constructed and located thereafter across a portion of the CSX railway and shall be acquired at not cost to the City and at the cost of Beazer Homes, pursuant to that certain sewer Agreement between the City of Atlanta (“Railroad Crossing Agreement”).

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

SECTION 1: That the Mayor or her designee is authorized to enter into an appropriate Railroad Crossing Agreement on behalf of the City, in substantial form as the Agreement attached hereto as Exhibit “A”, with CSX Transportation, Inc. (“CSX”) for location of certain sanitary sewer lines, as part of the Rockledge Sewer Relief Project without further authorization of the City Council and at no cost to the City.

SECTION 2: That the City Attorney, or designee, is directed to prepare an appropriate Railroad Crossing Agreement in connection with the Project for execution by the Mayor or her designee, which shall be acquired at no cost to the City but at the cost of Beazer Homes, pursuant to the above referenced Sewer Agreement.

SECTION 3: That the Agreement will not become binding on the City and the City will incur no obligation or liability under them until it has been duly executed by the Mayor or her designee, approved as to form by the City Attorney and delivered to the CSX.

SECTION 4: That all resolutions or parts of resolutions in conflict with this resolution are waived to the extent of the conflict.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: CITY UTILITIES COMMITTEE

Caption:

A RESOLUTION AUTHORIZING THE MAYOR OR HER DESIGNEE TO ENTER INTO A RAILROAD CROSSING AGREEMENT WITH CSX TRANSPORTATION, INC. ASSOCIATED WITH THE CONSTRUCTION OF A CERTAIN SANITARY SEWER RELOCATION PROJECT, KNOWN AS THE ROCKLEDGE SANITARY SEWER RELIEF PROJECT ("PROJECT"), LOCATED ALONG MANCHESTER, BISMARK AND ROCKLEDGE ROADS, PROVIDING CAPACITY RELIEF TO THE ROCKLEDGE SANITARY SEWER OUTFALL AT NO COST TO THE CITY; AND FOR OTHER PURPOSES.

Council Meeting Date: September 17, 2007

Requesting Dept.: Watershed Management

FAC Confirmed by: n/a

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.

The purpose of this legislation is to enter into a railroad crossing agreement with CSX Transportation in which Beazer Homes will participate in the construction of a sewer relief project. The project will provide sewer capacity for all future development in the effected area, including a new townhouse development being constructed by Beazer Homes. The sewer relief project includes a new pipeline crossing under CSX Transportation's railroad tracks.

2. Please provide background information regarding this legislation.

Example: The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.

The Rockledge Road sewer outfall provides service to a redeveloping area in the vicinity of Piedmont and Cheshire Bridge Roads. This 8-inch diameter sewer is capacity limited, and construction of a capacity relief project by the City is required in accordance with the First Amended Consent Decree.

Beazer Homes Corporation is planning on constructing a 162-unit townhouse development that is serviced by the Rockledge Road Outfall. Beazer Homes is providing a substantial investment into the relief project at no cost to the City, which includes installation of an 18" pipeline under existing CSX Transportation railroad tracks and design services for 900' of pipeline being installed by the City. The City's portion of the project is being constructed using the Annual Sanitary Sewer Construction Contract (FC-3006007935). In return for Beazer Homes' participation, the City has scheduled construction of the project to coincide with construction of the new townhouse development.

Execution of a Sewer Agreement with Beazer Homes, and the associated license agreement with CSX Transportation, allows for Beazer Homes' participation in the capacity relief project. This participation provides the City with substantial savings in design and construction costs, and provides sewer capacity for all future development along the Rockledge Road Outfall.

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** Sewer Agreement and CSX Transportation license agreement.

(b) **Source Selection:**

(c) **Bids/Proposals Due:**

(d) **Invitations Issued:**

(e) **Number of Bids:**

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) **Term of Contract:**

4. Fund Account Center (Ex. Name and number):

Fund: _____ Account: _____ Center: _____

5. Source of Funds: *Example: Local Assistance Grant*

6. Fiscal Impact: None

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery:

Examples:

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.***
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.***

This Legislative Request Form Was Prepared By: Joe Basista

PIPELINE CROSSING AGREEMENT

THIS AGREEMENT, Made and effective as of May 4, 2007, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF ATLANTA, a municipal corporation, political subdivision or state agency, under the laws of the State of Georgia, whose mailing address is 55 Trinity Avenue, Atlanta, Georgia 30303, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct, use and maintain a pipeline, solely for the transmission of raw/treated sewage, hereinafter called "Pipeline," under or across property owned or controlled by Licensor at or near Atlanta, County of Fulton, State of Georgia, located at Valuation Station 16786+27, Milepost SG-571.35, Atlanta Terminal Subdivision, hereinafter called the "Crossing," as shown on prints labeled Sheet SS.2, dated June 20, 2006, attached hereto and made a part hereof; other details and data pertaining to said Pipeline being as indicated on Application Form, dated March 30, 2007, also attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

- (A) Licensor's present and future right to occupy, possess and use its property within the area of the Crossing for any and all purposes;
- (B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and
- (C) Compliance by Licensee with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change said Pipeline at the Crossing above for the term herein stated, and to remove same upon termination.

1.2 The term Pipeline, as used herein, shall include only the pipes, ducts, casing, vents, manholes, connectors, fixtures, appliances and ancillary facilities devoted exclusively to the transmission usage above within the Crossing, and as shown on attached Application Form.

1.3 No additional pipeline or other facilities shall be placed, allowed or maintained by Licensee in, upon or along the Crossing except upon separate prior written consent of Licensor.

2. LICENSE FEE; TERM:

2.1 In lieu of annual payments and in consideration of Licensor's waiver of future fee increases, Licensee shall pay Licensor a one-time nonrefundable Encroachment Inventory Fee of FOUR THOUSAND AND 00/100 U.S. DOLLARS (\$4,000.00) upon execution of this Agreement. Licensee agrees that the Encroachment Inventory Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Pipeline or Crossing.

2.3 This Agreement shall terminate (1) May 3, 2032, or (2) as herein provided, but shall also terminate upon (a) default, (b) Licensee's cessation of use of the Pipeline or Crossing for the purpose(s) above, (c) removal of the Pipeline, (d) subsequent mutual consent, and/or (e) failure of Licensee to complete installation within 5 (five) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Pipeline and appurtenances, and/or maintenance thereof, or for any public works project of which said Pipeline is a part.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove said Pipeline, in a prudent, workmanlike manner, using quality materials and complying with: any applicable standard(s) or regulation(s) of Licensor (A.R.E.M.A. Specifications) and Licensee's particular industry, and/or any governmental or regulatory body having jurisdiction over the Crossing or Pipeline.

3.2 Location and construction of Pipeline shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor, and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All Licensee's work and exercise of rights hereunder shall be undertaken at time(s) satisfactory to Licensor and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Pipeline, Licensee shall not use explosives of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to Pipeline, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Pipeline, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Crossing, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Crossing shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to Pipeline.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Crossing for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (state, federal or local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (20 CFR 1926.651(b), et al.), and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

4.3 Licensee's facility(ies) covered by this Agreement, are to be placed/attached on/to existing facility(ies) owned by Licensee, covered by Agreement No. SAL-025223. Licensee acknowledges and understands that if Agreement No. SAL-025223 is cancelled/terminated, the facility(ies) covered by Agreement No. SAL-025223 must be removed from Licensor's property, and will not be covered by this Agreement.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

- (A) Support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) Backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and
- (C) Either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner as Licensor may approve.

5.2 After construction or maintenance of Pipeline, Licensee shall:

- (A) Restore said track(s), roadbed and other disturbed property; and
- (B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of Pipeline or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Crossing area for a period of three (3) years after completion of installation.

6. TRACK CHANGES:

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's right-of-way and property necessitate any change of location, height or depth of Pipeline or Crossing, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in Pipeline or Crossing to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

7. PIPE CHANGES:

7.1 Licensee shall periodically monitor and verify the depth or height of Pipeline and Crossing in relation to the existing tracks and facilities, and shall relocate Pipeline or change Crossing, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of this Agreement or of any public authority.

7.2 If Licensee undertakes to revise, renew, relocate or change all or any part of Pipeline (including any change in circumference, diameter or radius of pipe or carrier pipe, change in operating pressure, or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before any such change is made. After approval the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Pipeline/Crossing herein permitted may not presently interfere with Licensor's railroad operations or facilities, in the event that the operation, existence or maintenance of said Pipeline, in the sole judgment of Licensor, causes: (a) interference (physical, magnetic or otherwise) with Licensor's communication, signal or other wires, powerlines, train control system, or facilities; or (b) interference in any manner with the operation, maintenance or use of the right-of-way, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly take such remedial action or make such changes in its Pipeline as may be required in the reasonable judgment of Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so, at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect Licensee's Pipeline, Licensor hereby reserves the right to inspect same and to require Licensee to undertake necessary repairs, maintenance or adjustments to Pipeline, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 Licensee hereby assumes, and, to the fullest extent permitted by State law (Constitutional or Statutory, as amended), shall defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, presence, existence, repair, maintenance, replacement, operations, use or removal of Pipeline or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of pipeline, wherein agents, equipment or personnel of Licensee are on the railroad right-of-way, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.2 Use of Licensors right-of-way involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or Pipeline in, on, over or under the Occupancy, including loss of or any interference with use thereof, regardless of cause, including electrical field creation, fire or derailment arising out of rail operations. For this Section, the term "Licensee's Property" shall include pipe contents as well as property of third parties situated or placed upon Licensors right-of-way by Licensee or by such third parties at request of or for benefit of Licensee.

9.3 To the extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensors harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Crossing area, arising from or in connection with the use of this Crossing or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through said Pipeline; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Pipeline leakage.

9.4 Obligations of Licensee hereunder to defend, indemnify and hold Licensors harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensors, as well as any railroad that operates over the right-of-way on which the Crossing is located, and their respective officers, agents and employees.

9.5 If a claim is made or action is brought against either party, for which the other party may be responsible hereunder, in whole or in part, such other party shall be notified and permitted to participate in the handling or defense of such claim or action.

9.6 Notwithstanding anything contained in this Agreement, the limitations of liability contained in the state statutes, as amended from time to time, shall not limit Licensors ability to collect under the insurance policies required to be maintained under this Agreement.

10. INSURANCE:

10.1 Prior to commencement of surveys, construction or occupation of Crossing pursuant to this Agreement, Licensee shall procure, and shall maintain during the continuance of this Agreement, at Licensee's sole cost and expense, a policy of Commercial General Liability Insurance (CGL), naming Licensors, and/or its designee, as additional insured and covering liability assumed by Licensee under this Agreement. A coverage limit of not less than THREE MILLION AND 00/100 U.S. DOLLARS (\$3,000,000.00) Combined Single Limit per occurrence for bodily injury liability and property damage liability is currently required as a prudent minimum to protect Licensee's assumed obligations. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensors, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to Speed Code C907 at the address listed above.

10.2 If said CGL policy does not automatically cover Licensee's contractual liability during periods of survey, construction, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

10.4 Securing such insurance shall not limit Licensee's liability under this Agreement, but shall be additional security therefor.

10.5 In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensors; and (b) procure and maintain during the period of construction or demolition operations, at no cost to Licensors, Railroad Protective Liability (RPL) Insurance, naming Licensors, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Licensors prior to commencement of such construction or demolition. Licensors reserves the right to demand higher limits.

At Licensors' option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee may pay Licensors, at Licensors' current rate at time of request, the cost of adding this Crossing, or additional construction and/or demolition activities, to Licensors' Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensors' discretion and may not be available under all circumstances.

11. GRADE CROSSINGS; FLAGGING:

11.1 Nothing herein contained shall be construed to permit Licensee, or any contractor of Licensee, to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensors (CSXT Form 7422).

11.2 If Licensors deems it advisable, during the progress of any construction, maintenance, repair, renewal, alteration, change or removal of said Pipeline, to place watchmen, flagmen, inspectors or supervisors at the Crossing for protection of operations of Licensors or others on Licensors' right-of-way, and to keep persons, equipment and materials away from the track(s), Licensors shall have the right to do so at the expense of Licensee, but Licensors shall not be liable for failure to do so.

12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or pipe changes shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" work) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor, subject to Licensee's budgetary rules. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all materials used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate(s). Licensor may, at its discretion, require advance deposit for estimated costs and expenses associated herein.

13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of license fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of:
(a) revocation, (b) termination, (c) subsequent agreement, or (d) Licensee's removal of Pipeline from the Crossing. However, neither revocation nor termination of this Agreement shall affect any claims and liabilities which may have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove Pipeline from the right-of-way of Licensor, unless the parties hereto agree otherwise, (b) restore property of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensors Division Engineer (Atlanta Division, 1590 Marietta Boulevard N.W., Atlanta, GA 30318-3699) at least thirty (30) days written notice before doing any work on Licensors right-of-way, except that in cases of emergency shorter notice may be given to said Division Engineer. The rail operations emergency phone number for Licensors is: 1-800-232-0144. The emergency phone number for Licensee is: (404) 330-6249.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensors at the address shown on Page 1, c/o CSXT Contract Administration, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered effective upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensors prior written consent to any assignment of Licensees interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensors written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensors expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensors underlying property interests in the Crossing.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensors, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensors for any loss, cost or expense Licensors may incur as a result of Licensees failure to obtain said consent.

17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Right-of-Way in the Crossing occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Right-of-Way in the Crossing, and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Right-of-Way, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Right-of-Way which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Crossing is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Right-of-Way, with dominion and control over such portion of the Right-of-Way remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Right-of-Way occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Right-of-Way and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Right-of-Way. Licensee further acknowledges that it does not have the right to occupy any portion of the Right-of-Way held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Right-of-Way that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Right-of-Way in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon Licensee's facilities placement, or the presence of Licensee's facilities in, on, or along the Crossing, including claims for punitive or special damages.

17.5 Licensee shall not at any time own, or claim any right, title or interest in or to Licensor's property occupied by the Crossings, nor shall the exercise of this Agreement for any length of time give rise to any right title or interest in License, to said property other than the license herein created.

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Pipeline and Crossing are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

18.9 Licensor shall refund to Licensee any overpayments collected, plus any taxes paid in advance; PROVIDED, however, such refund shall not be made when the cumulative total involved is less than One Hundred Dollars (\$100.00).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

CITY OF ATLANTA

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax ID No. _____

Authority under Ordinance or
Resolution No. _____,
dated _____.

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: _____ Maisha L. Wood _____

Contact Number: _____ (404) 330-6887 _____

Originating Department: _____ Department of Watershed Management _____

Committee(s) of Purview: _____ City Utilities _____

Chief of Staff Deadline: _____ August 30, 2007 _____

Anticipated Committee Meeting Date(s): _____ September 11, 2007 _____

Anticipated Full Council Date: _____ September 17, 2007 _____

Legislative Counsel's Signature: _____

Commissioner Signature: _____ Robert J. Hunter xP _____

Chief Procurement Officer Signature: _____

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR OR HER DESIGNEE TO ENTER INTO A RAILROAD CROSSING AGREEMENT WITH CSX TRANSPORTATION, INC. ASSOCIATED WITH THE CONSTRUCTION OF A CERTAIN SANITARY SEWER RELOCATION PROJECT, KNOWN AS THE ROCKLEDGE SANITARY SEWER RELIEF PROJECT ("PROJECT"), LOCATED ALONG MANCHESTER, BISMARK AND ROCKLEDGE ROADS, PROVIDING CAPACITY RELIEF TO THE ROCKLEDGE SANITARY SEWER OUTFALL AT NO COST TO THE CITY; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any) n/a

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: 8/24/07 (date) (signature) Reviewed by: _____ (date) (signature)

Submitted to Council: _____
(date)